
CROATIA REGISTRIES MODERNIZATION REPORT

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Prepared by:



USAID REGISTRIES MODERNIZATION TEAM

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TABLE OF CONTENTS

Introduction	1
I. Executive Summary	2
II. Assessment Findings.....	5
A. Legal Framework.....	5
1. Registry Law in General	5
2. Laws Relating to Collateral Registry	7
a) Principals of Laws Relating to Collateral Registry	7
b) Comments on the Laws	8
c) Recommendations.....	8
3. Laws Relating to Land Registry.....	8
a) Principles of Laws Relating to Land Registry.....	9
b) Comments on the Laws	9
c) Recommendations.....	10
4. Laws Relating to the Company Registry.....	10
a) Principles of Laws Relating to Company Registry	10
b) Comments on the Laws	12
c) Recommendations.....	12
B. Implementing Institutions	13
1. Collateral Registry	13
a) Municipal Court.....	13
(1) Organization.....	13
(2) Procedures.....	14
(3) Identified Concerns and Problem Areas	14
(4) Recommendations	15
b) Special Registries	15
c) Notaries.....	16
2. Land Registry.....	16
a) Municipal Court: Division of Land Registry	16
(1) Procedures.....	16
(2) Identified Concerns and Problem Areas	17
(3) Recommendations	21
3. Company Registry.....	23
a) Commercial Courts	23
(1) Operations.....	23
(2) Procedures.....	24
(3) Concerns and Identified Problems:	27
(4) Recommendations	29
b) Sole Proprietor Registries.....	30
c) Professional Business Enterprises Registries.....	30
C. Supporting Institutions.....	30
1. Croatian Bar Association	30
2. Notaries.....	31
3. Banks	31
4. Business Associations and Support Organizations	31

5.	Land Cadastre	32
6.	Statistical Bureau	32
D.	Market for Reform	32
1.	Collateral Registry	33
2.	Land Registry	34
3.	Company Registry	35
III.	Conclusion	37

INTRODUCTION

As part of the U.S. Agency for International Development ("USAID") assistance to the Government of Croatia ("GOC") in its efforts to improve the environment for economic growth, USAID has contracted Booz·Allen & Hamilton Inc. ("Booz·Allen") to provide technical assistance in commercial law reform. Specifically, USAID and the GOC have decided to focus the technical assistance on advising a Joint Registries Commission ("the Commission") organized and coordinated by the Ministry of Justice ("MOJ"). The Commission is working on the following three priority objectives for reform of the legal and institutional framework for commercial activity in Croatia:

- *Modernizing registries* for land, collateral, and companies in order to strengthen the overall framework for the creation and protection of property rights;
- *Strengthening judicial administration* through institutional and administrative reforms designed to increase efficiency, transparency, and predictability in the application and interpretation of important commercial and economic laws; and
- *Increasing legal information, knowledge, and access to the policy process* in key areas of commercial and economic law (e.g., bankruptcy, companies, competition, contracts, intellectual property, international trade, government procurement, secured transactions, and others).

Each of the three priority objectives will be addressed by Booz·Allen Teams between April and June 2000. The first Team focused on Registries Modernization and included Eufropa Snyder, JD, Booz·Allen Team Leader; Aimee Carter, Business Process Re-engineering Specialist, Booz·Allen; and Jerome Donovan, JD, independent consultant to Booz·Allen. The Team began its work in Zagreb on April 16, and departed on May 6.

In Zagreb, the Team worked in conjunction with the Commission, which included representatives from the MOJ, the High Commercial Court, the Croatian Judges' Association, the Zagreb Municipal Court, the Employers Association, and others. The Team supported the Commission in defining an agenda and action plan for modernizing registries by gathering data, analyzing technical issues, and developing policy options for the Commission to consider. The Team interviewed representatives of private and public organizations with an interest in having efficient registries.

I. EXECUTIVE SUMMARY

The following is the Registries Modernization Team's report of findings and recommendations for modernizing the Land and Company Registries and establishing a formal collateral registry. The Registries Modernization Team is one of three teams that is providing technical advisory services to a Government of Croatia (GOC) Commission on Commercial Law Reform.

The Registries Modernization Team focused on the three registries from four specific perspectives:

- *Legal Framework:* the laws and regulations governing the respective registries, and recommendations for reform thereof
- *Implementing Institutions:* the legal and other institutions that implement the respective laws
- *Supporting Institutions:* the official and unofficial offices, organizations, and individuals that have an interest (stake) in the respective registries
- *Market for Reform:* the “supply” side of the current situation for each registry (rules, practical problems of enforcement, e.g.) and the “demand” side (the institutions and individuals who want the procedures modernized and reformed).

In preparing this assessment, the Team reviewed relevant laws, reports, and assessments prepared by Croatian and foreign experts. In Croatia, the team interviewed judges, lawyers, leaders of professional associations, academics, members of business-support organizations, representatives of multilateral and bilateral donor organizations, and representatives of the Croatian and foreign business communities. Individuals representing the implementing and supporting institutions generously contributed their time and effort to this assessment. Local counsel provided overviews of the laws.

PRINCIPAL FINDINGS

The basic legislative framework for commercial activity in Croatia is in place. Difficulties in implementation and enforcement arise from a variety of causes. For example, a severe shortage of the tools to do the required jobs results in a demoralizing gridlock at the working level of two major courts—the Municipal Court and the Commercial Court—when they attempt to perform their statutory roles. These difficulties faced by these two courts is made distressingly clear every day:

The Municipal Court, which houses the Land Registry, is attempting to harmonize the old “classical” land registration system with the Deposited Contracts Book registration system at the same time that it is trying to harmonize both systems to the cadastre (the land maps that indicate possession but not ownership). While juggling these Herculean tasks, the Court is inundated with documents, which must be processed by an undermanned and insufficiently trained and equipped staff. The Land Registry uses computers, but they are under-powered, too few, and generally inadequate to the tasks at hand.

The Commercial Court, which houses the Company Register, faces similar but less dire challenges. It, too, must handle an avalanche of paper, mandated not just by the Company Act and the Law on the Court Registry, but by other laws, such as those governing statistics and company liquidations. Political turmoil and frequent new laws have resulted in surges of registrations and re-registrations that engulf the Court's registration clerks and spur public cynicism and dissatisfaction with the whole system.

In addition, the laws relating to the registration of security interests in movable property needs to be incorporated into a secured transactions law which clarifies the agency, procedures, and methodology to be used in the creation of such security interests. This law should reflect the realities of the workings of the financial marketplace.

The overall solutions to these problems are clear. First, the systems themselves must be modernized and fully computerized. Next, the court's staffs must be enlarged and trained. But, perhaps most importantly, the Government must be willing to support pragmatism above tradition, allocate funds for these purposes, and use internationally recognized "best practices" as guides for reform.

To begin, however, there is a strong demand for immediate, non-radical changes to the Land Registry, followed by progressively more complex and global changes. This schedule of changes will insure increased stability of the Land Registry without overburdening the staff and funds of the Land Registry. The Company Registry will benefit from some "fine-tuning" by simplifying and streamlining registration procedures.

Due to the newness of the laws and lack of experience of the judges and clerks in all registries, staff training will greatly increase the efficiency of the registries.

IMPLEMENTING INSTITUTIONS

The challenges of achieving significant improvements in this dimension of commercial law development are considerable. The Government's willingness to take bold steps and the donor community's willingness to place its prestige on the line to support the Government, will determine to a significant degree whether this basic capacity can be enhanced in the next two years.

SUPPORTING INSTITUTIONS

Supporting institutions for economic and commercial laws that exist in Croatia are good. Nevertheless, much work needs to be done in this area to reach the "critical mass" required to bring Croatia's commercial environment into line with the European Union.

There is also a general lack of specialized professional organizations dedicated to increasing the level of understanding and sophistication of economic and commercial laws and practices. Croatia, for example, does not yet have an organization of bankruptcy practitioners that could play a key role in addressing the lack of consensus that exists on how the bankruptcy and related laws are to be interpreted and applied. The same holds true for the other legal areas considered in this assessment.

This dimension of commercial law development in Croatia can be significantly strengthened within a one- to two-year time frame, provided Croatia receives focused support from the donor community in this important area.

"MARKET" FOR REFORM

The "supply" of framework laws in Croatia is quite good, even though there is an immediate need to develop and implement detailed regulations in certain areas considered in this assessment. Currently, legal scholars are consulted in developing legislative reforms, which is a positive feature. However, wider access to the process of developing and implementing commercial law reforms seems to be somewhat limited and ad hoc. Mechanisms for sustainable public-private sector policy dialog do not appear to exist. Users expressed frustration that they were not sufficiently involved in the development of draft laws and therefore drafts did not reflect current market conditions or business realities. The new government has expressed its firm determination to include a wider circle of end-users in the policy development process including judges, lawyers, businesses, and so forth.

Information flows are restricted, which also represents a significant "supply-side" deficit in the development of Croatia's legal and regulatory environment for commercial activity. On the positive side, Croatia's official government Websites are among the most sophisticated and content-rich in Europe. The entire official gazette *Narodne Novine* is published on-line in Croatian, and constitutes an exceptional resource for the continued development of Croatia's overall legal environment.

While access to framework laws is generally very good in comparative terms, there is a parallel deficit in case-reporting that needs to be addressed. For example, only selected Supreme Court decisions are reported, and then only in excerpted form. Both judges and lawyers have complained that this practice does not provide the practical guidance needed to confidently apply the newer economic and commercial laws. Further, this deficit is compounded by a reported lack of authoritative commentary, and practical guidelines, in those areas where a sufficient body of jurisprudence has not yet developed.

Inefficient management of information is also a significant crosscutting problem. Judicial and administrative review processes are significantly burdened by a paper-based system of record keeping (e.g., court dockets, land registries, etc.) that is done by hand. In addition to the administrative costs associated with operating such a system, the inefficiencies inherent in this system undermine the transparency and predictability of the administration of justice, particularly in the larger urban centers where case volumes are large and backlogs are growing. The lack of clearly mandated periods for judicial action, and a lack of a modern case-tracking system, similarly create opportunities to manipulate the judicial and administrative process either to accelerate, or delay it. Although this situation is by no means unique to Croatia, it is a significant systemic weakness that contributes to the implementation/enforcement gap observed during this assessment.

On the "demand" side of the equation, there is reason for some optimism. A high degree of consensus seems to exist among those interviewed that commercial law reform is needed. Generally speaking, the broad outlines of what needs to be accomplished seem to be well known; however this consensus is unlikely to hold as more detailed proposals on the "what"

and "how" of specific reforms are put forward. Nevertheless, there is a sense of pragmatic optimism among those interviewed about the future of commercial law reform in Croatia.

The most "coherent" or organized segment of society demanding reform in this area is, not surprisingly, the legal profession. The judges interviewed during the assessment were unanimous in the view that the current situation is unacceptable. In general, there is recognition that work paths of judicial and administrative review processes are highly inefficient; however, the notion that these can be significantly altered in the near-term is viewed as improbable. Given the generally conservative views expressed among those interviewed, incremental reforms appear more likely than systemic changes.

PRINCIPAL RECOMMENDATIONS

See Attachment 1

II. ASSESSMENT FINDINGS

A. LEGAL FRAMEWORK

1. REGISTRY LAW IN GENERAL

The evolution of laws and procedures relating to registries arises from the need of society to publicize the exercise of property rights and of the government to regulate the exercise of these rights. Owning property, doing business, and using property as security to guarantee performance of terms of an agreement have been deemed by most countries as rights which require some form of publication. Historically, publication of the exercise of rights relating to property included reading of the document creating the rights in court (Norway), taking possession of the property and acknowledging the transaction before a number of witnesses (West Africa), and affixing a notice to the property (Athens, China, and some countries in Central and Eastern Europe). Progression to a written registry developed early in many countries as demanded by the society. The land system that is currently in place in Germany and Switzerland dates back to 1872. Countries have imposed various requirements on individuals to create and do business to control the activities of such enterprises. Registration of business enterprises have been associated with private and public associations (e.g. "guilds").

While the structure and exact functions of the registry may differ from country to country, the essential elements of a registry are 1) the accuracy, completeness, and order of the data; 2) the legal effect of the act of registration and the data contained in the registry on the persons to the transaction and third parties; and 3) the allocation of risk associated with false or incomplete data in the registry. In the area of immovable property (i.e., land, buildings), the most dominant system is the registration of title as distinct from registration of deeds. This system is often referred to as a "positive registry" as registration in the system confers the person "positive title." Under the "positive registry" information from the registry is guaranteed by the state, the accuracy of the information is verified by the state, and registration is essential to the effectiveness of the transaction between the parties and, secondarily, third parties to the transaction. The goal of the positive registry is to have the public records reflect the actual state of title so that the owner and other parties can place

maximum reliance on the published information. Examples of this type of positive registry, with some variation, is the Torrens-type system used in Australia and the German system.

In Europe some countries adopted a "negative" system. Laws in France, Belgium, and Italy provide that one does not have to register a transaction to be legally effective between the parties to the contract, but that third parties are not limited by a transaction that has not been recorded. There are no guarantees by the government of the ownership of the land or rights acquired by a prospective buyer or lender. Rights of third parties to the transaction are governed by the concept of priority. The potential buyer or lender must review the records and assume the risks associated with the transaction. It is interesting to note that when the title is not guaranteed by the government, other institutions arise to provide the parties guarantees. In France, the notary serves as a guarantor. In the United States, private companies issue policies insuring the title of the land.

Registries established for the purpose of publicizing security interests in movable property (i.e., equipment, cars, accounts receivable) by their nature requires less information and guarantees. Characteristics of most movable property, when compared to land and other immovable property, suggests quicker or more frequent transfer of possession and title and a more temporary existence due to consumption or use. Further, under most laws, there is a presumption that the holder of movable property is the owner of that property and entitled to transfer or otherwise alienate it. Thus, the primary functions of a registry for movable property is providing notice to third parties of a claim of right by the creditor to sell such property in the event that the debtor fails to fulfill the debtor's obligations to the creditor and to establish the priority of creditors as to the assets of the debtor. To the degree that the state involves itself in guaranteeing the title of ownership of the movable property subject to the pledge, it is paying the cost of reducing a risk associated with lending the monies by the bank to the borrower. A banker requires fees, usually in the form of interest, to take such risk. However, the direct benefit to the state in assuming this burden is marginal.

The functions of a company registry reflect the protections afforded to certain individuals to limit the risk of doing business. Historically, some governments granted permission to individuals to conduct any form of business. Today in most countries the individual is deemed to have the right to conduct business without permission per se. However, certain forms of businesses (e.g. limited liability companies) provided certain protections to the individual who has formed the business. For shielding the individual from personal liability, the government requires the new legal business entity to offer certain assurances (i.e., minimum capital) and information about the company in a publicly accessible registry.

There are various approaches to overseeing the functions of a registry. Historically, governmental agencies were delegated the authority and responsibility of managing the input of information into the registry; maintaining the existence, integrity, and correctness of the data; verifying the information; and financing these activities. While private registries have existed, they are not empowered to effect legal rights between the creditor and third parties. More recently, arrangements between governments and private associations have allowed the private associations to fulfill and finance some of the functions of a registry. For example: in New Brunswick, Canada, persons (i.e. companies, banks, lawyers, realtors) can request membership into an association which is permitted to enter data in the registry. There are fees associated with membership and entry of information into the registry. The computerized system tracks all entries by person inserting such information.

2. LAWS RELATING TO COLLATERAL REGISTRY

a) PRINCIPALS OF LAWS RELATING TO COLLATERAL REGISTRY

The Croatian laws which regulate the registration of movable property are the Law on Property and Other Rights on Objects ("Law on Property"), the Law on Obligations, and the Law on Execution. There is a draft of a law which would specifically address security interests in movable property.

The Law on Property does not directly regulate the non-possessory pledge. The Law on Property regulates pledges in Chapters 2, 3 and 4 of Part VII, Articles 306-353, and supplements the provisions of the Law on Obligations. Pledges on most movable property are valid if the object that is subject to the pledge ("charged property") is transferred to the creditor or a special depository in certain cases. (See Article 966 of the Law on Obligations.) When the charged property must be registered in a special registry to show change in ownership (e.g., automobile), the pledge is valid to third parties only if registered in that special registry (Article 34-5 of the Law of Property). Article 304 of the Law on Property defines a mortgage ("hipoteka") which is generally understood to be applicable to immovable property. However, Article 304 appears to permit the application to movable property in the absence of any other specific provisions of the law addressing movable property. This article refers to such pledges as "registered liens" ("registarsko zalozno pravo").

Another method of establishing a pledge on movable property is by judicial agreement between the parties (Article 312 of the Law on Property). The judicial agreement must be approved by the Court and entered into the minutes of the Court. Through this method, the pledge become registered. The charged property remains in the possession of the debtor and the law prohibits the creditor from taking possession of the charged property until the underlying obligation become due and payable (Article 321 of the Law on Property).

The Law on Property also codifies the Romanist concept of fiduciary transfers. Principles applicable to the other methods of creating a pledge of movable property are equally applicable to fiduciary transfers except in those situations where not otherwise in the Law on Property (Section 297-2).

The Law on Execution provides methods to establish a security interest in movable property through an agreement by the parties (Chapters 27 and 28 of the Law on Execution). There are two basic methods for establishing the agreement: judicial determination and notary agreement. There are two bases for the agreement: acquisition of a pledge or mortgage and transfer of ownership. Both methods and bases require publication of the agreement in the official gazette ("Narodne Novine") and entry into the Court records (Articles 266, 271 (2-3), 272(1), 274(9) and 279(5) of the Law on Execution).

The law also recognizes that there may be multiple pledges of the same piece of property (Article 302-2 of the Law on Property and Article 970 of the Law on Obligation). Article 307(4) of the Law on Property specifically voids any agreement between parties which restrict the ability of the debtor to establish a subsequent loan on a property.

The law allows pledges of a broad range of types of property (Article 989-991 of the Law of Obligation); however, the property which is the charged property must be a specific and individualized property and does not provide for generically described property (Article 298 of the Law on Property and Articles 266 and 274(9) of the Law of Execution). Pledges of rights and accounts receivables are regulated in Articles 334-335 of the Law on Property.

Laws protect bona fide purchasers of property which is the charged property and consumers who purchase from "shopkeepers" (Article 12 of the Law on Obligations).

b) COMMENTS ON THE LAWS

The criticism that has been made of the laws relating to the registration of pledges on movable property is that they are inconsistent, complex, and ambiguous due to the need to cross-reference the respective laws. Further, it is thought that the laws do not allow enough flexibility in regulating existing forms of transactions by lending institutions. For example:

- A complete listing of the charged property requires a notary or Court officer to conduct an inspection of the charged property; to prepare a detailed description of the charged property (i.e. name of vendor making property, serial number, color); and to label and segregate the property. For example: if the property was bulk sugar, the bags of sugar must be separately stored in the debtor's warehouse, marked as being a pledged property, and include the name of the pledgee. This is costly and timely procedure.
- On revolving lines of credit, a new mortgage must be prepared, notarized, and registered for each distribution of monies. This is a slow and cumbersome procedure and not consistent with banking practices.
- While the law requires the registration of a pledge of a title property (e.g., auto), the agency in charge of the registration of automobiles has refused to list the pledges in its records. Borrowers are required to leave ownership registration papers with the bank. If repairs are required on the automobiles, the borrower must obtain the owner registration papers from the bank and then return them upon completion of the work. From the lender's perspective, release of these forms to the borrower increases the risk of loss of the charged property as collateral.

c) RECOMMENDATIONS

- Modify laws to designate clearly procedures and rules for the establishment of a formal, centralized collateral registry for registration of security interests in movable properties.
- Review and modify laws to address concerns expressed by lenders that current laws do not allow sufficient flexibility to engage in common lending practices.
- Incorporate provisions in law regarding "fiduciary transfers" to safeguard consumers or persons against abuses by creditors.

3. LAWS RELATING TO LAND REGISTRY

a) PRINCIPLES OF LAWS RELATING TO LAND REGISTRY

The laws which regulate the registration of immovable property include the Law on Property and Other Rights on Objects ("Law on Property"), the Law on Obligations, the Law on Execution, Notary Law, the Law on Land Registration, Law of Courts, and regulations creating the "Book of Deposited Contracts" registry.

The Law on Property sets forth the general principles of private ownership. Combined with the Law on Obligations and Law on Execution, the law regulates the mortgage of immovable property. The Law on Execution defines different methods for the creation of a security interest in immovable property which is registered in the Land Registry ("registered property") and immovable property which is not registered in the Land Registry ("unregistered property"). For both types of immovable property, there are two bases: acquisition of a mortgage and transfer of ownership. For registered property, only the Court may authorize that an agreement creating a mortgage is sufficient to record in the Land Registry. For unregistered property, the Court or notary may process for registration the agreement creating the mortgage. Both the Court and notary must publicize the agreement creating a mortgage in the official gazette. A notary is required to file the agreement and documents with the Court. For a fiduciary transfer, the Court or notary may process the agreement transferring the ownership for both registered and unregistered immovable property. There is also a requirement that the agreement be publicized in the official gazette.

The Law on Land Registration is based upon Austrian law and was enacted with the anticipation that the software used in Austria for registration would be donated to Croatia. The current procedures and practices of the Land Registry are not based upon this law. The Law on Land Registration designates that the registry can be manual or in electronic form. Computerization of the Registry was to be done within a year of the passage of the law. The Maritime, Traffic, and Communications Ministry; the Ministry of Finance; and the head of Administration who is in charge of the cadastre also had to agree on the procedures. The Law designates an agency in government responsible for the Registry, and requires the storage of original documents. Land records are to be centralized for the whole country. It also requires that the information be made public and objections are to be filed within certain time period. The legal presumption is that the person who is listed in the Registry is the owner. An agreement is valid even if not registered. Any disputes would be resolved by Court. If an agreement transferring ownership from the record owner is not registered, one can obtain bona fide purchaser status if the land is purchased from the registered owner.

In 1992, regulations were passed to address the needs of the tenants of buildings who were not otherwise registered. These regulations provided for the transfer of the apartments to the tenants and registration in the "Book of Deposited Contracts" registry, which is part of the Land Registry. This registry lists information regarding the parties to the agreement, building and apartment identification numbers provided by the local municipality, and status information on any cases involving that property. A certificate in the same format as the extract from the classical registry can be issued from these computerized records. The system is recognized under the Law on Land Registry.

b) COMMENTS ON THE LAWS

The main criticism of the law was that the laws do not match reality or address long-standing problems relating to the underlying institutions and procedures. More specific comments are:

- The agreement between the parties is subject to ratification and approval by the Court or notary. There is no set of prescribed conditions which the agreement must met. Rather, the law prescribes that the agreement must be consistent with the law in general. The task of the Court and notary is to review this consistency. While this procedure could help create legal stability, it creates a burden on the Court which must review all agreements between all parties, not only the agreement about which a dispute may arise between a few parties.
- Liability that is assumed by the "fiduciary owner" is unclear. Further, the borrower has few rights of an owner and limited rights to prevent the fiduciary owner from the selling or alienating of the property.
- Publication in the official gazette does not provide an adequate means to notify others of the rights in the agreements.

c) RECOMMENDATIONS

- Designate or extend transitional period under law to allow time to harmonize realities and Court procedures with the law.
- Confirm the legal effect of documents entered into Book of Deposited Contracts registry, classical registry, and any other procedures adopted by Municipal Court during the transitional period.
- Authorize return of original documents if electronic or microfilm copies are maintained by Court.

4. LAWS RELATING TO THE COMPANY REGISTRY

a) PRINCIPLES OF LAWS RELATING TO COMPANY REGISTRY

The laws which regulate the registration of companies are the Company Law of 1993 (amended in 1997), the Law on Court Registries of December 1994, and the Law on Classification of Objectives.

Chapter V of the Company Law refers to the Commercial Register and outlines the role of the Register and the company information required to be registered. Article 60 of the Company Law explicitly states that the Commercial Court shall control the Company Registry and that the organization and control of the register, and procedures of the Registry are subject to law. Articles 59-67 of Chapter V of the Company Law provide for the application requirements, registration of the signatures companies' authorized representatives, announcement of the registration in the official gazette and another local gazette, public access to Company Registry information, the effect of registration, and the local authorities for registration.

The Law on Court Registries was enacted to provide additional information on company registration and to further guide the Company Registries on their roles and responsibilities. It requires registration of all economic entities regulated by the Company Law.

While Chapter V of the Company Law outlines the documents for application, the Law on Court Registries describes the role of the Registry and the procedures by which registration occurs. The Registry's role includes review of requirements, verification of information, adjusting and/or canceling registrations based on law, deciding on registrations, and hearing appeals. The Law on Court Registries also explains what shall happen in the event that registration requirements are not met or a registration is deemed inadmissible (Article 46 of the Company Law). Neither of the two main bodies of legislation state that the Company Registry is verifying the merit of the proposed company. The Registry is simply a place where the documents are filed and reviewed as the correct documentation to be filed according to law.

Secondary bodies of legislation that complete the legal framework for the Company Registry includes the Law on Classification of Objectives. The Law on Classification of the Objectives affects the Company Registry in that the Registry staff are obliged to consult this law to verify the listed objectives included in the registration application. The Law on Classification of Objectives was originally intended to facilitate the collection of commercial statistics and specifically negates giving actual commercial rights to anyone.

By law the Company Registry is a public record. It is maintained in paper and electronic form. The paper form consists of the main book and the various entries. The main book identifies the company. The various entries comprise the company's file. Each entry contains the backup information supporting these entries, including any judicial decisions or rulings supporting individual entries. Certain entries are available only to third parties with a "legal" interest in them. Such parties are defined by law. (State bodies, notaries public, and the registered entities themselves need not show a "legal" interest in such entries. In all other cases, the Court decides whether a third party has a "legal" interest in the information.)

All registrations in the main book are published in the official gazette (*Narodne Novine*) and in a local newspaper. In December of each year the local Commercial Court announces in which gazettes registrations can be published in the following calendar year.

The Government of Croatia issued a decision ("Regulations of the Government of Croatia on the Way, Conditions, and Fee for Access to the Data in the Court Registry") regarding the online use of the Company Registry in the Commercial Court. It provides that the President of the High Commercial Court in Zagreb has the authority to grant access to the Registry to persons who have requested such access in writing. Every user receives a registration number and password. The President has the right to deny electronic access to the Registry. By law, however, notaries public and the Chamber of Economy have such access. The President also appoints the staff members of the Commercial Court who are authorized to give information to users. In short, the public's online access to the Registry is not automatic but is granted only by the President's affirmative answer to a request, which may be transmitted electronically.

The Government's decision also requires strict accounting for the use of the time, disc capacity, and paper used to answer a request. It also requires that the Court verify the answer, which is accomplished by the affixing of a separate electronic signature to each answer.

Notwithstanding this itemized cost accounting, the cost for the actual access is fixed. It consists of an initial fee of HRK5,000, monthly fee of HRK1,000, and HRK5 for each login. Most fees go to the state budget, with a part of the fees dedicated to maintaining the Registry. The decision neither specifies the data that is available electronically nor contains restrictions on what data may be provided.

The MOJ is responsible for all technical aspects of establishing and maintaining the Company Registry and the preparation and implementation of regulations for its operation. Required information includes identification of company founders and registrants, capital assets, address and MBS number which is assigned by the Bureau of Statistics. Joint stock companies are also required to provide verification of the value of the company's non-cash assets.

All economic entities regulated by the Company Law must be registered. Registration is based on a non-adversary judicial procedure in the Commercial Court. Hearings on registrations are available but not mandatory. Details of the company registration procedure and the organization of the Company are described below in the section on Implementing Institutions.

b) COMMENTS ON THE LAWS

- While the registration procedure is relatively simple, it is time-consuming. There are too many redundant documents required for the registration process.
- The law provides for judicial supervision of the preparation of registration documents and judicial review of certain facts. In practice, while the judge overseeing the registration reviews the registration documents for consistency with the Registry Act, he/she does not actually verify the accuracy of the facts stated therein because there is no mechanism to do so. In general the required information under the law is clearly identified and adequate to identify the owners and officers of the company but is not excessive.
- Forms of decisions to register companies should be simplified and standardized. Decisions should consist of only a line or two stating that the company has been registered.
- Judges should be able to confer with notaries concerning pending requests for the company registry letting the judge rely on the notaries' prior determination of procedural regularity when issuing decisions to register a company.
- A set time schedule should be made for publications in the official gazette.

c) RECOMMENDATIONS

- Amend law to provide that if a company is non-responsive to a summons, Court may declare an application void or liquidate the company in a simplified manner.
- Amend law to limit information that must be maintained in the computerized system and files of Commercial Court to only information relating to company existence, not functions.
- Amend law to limit information and documents that the Court must keep for liquidated companies by designating the type of information and time period for which such information must be kept (e.g., limit retention to files until the time when applicable rights to bring suit has terminated under the law).
- Amend law to omit obligatory use of description of company objectives listed in the Classification of Objectives. Provide for general statement of objective such as "...to do all forms of business that are legally authorized by the laws of Croatia."

B. IMPLEMENTING INSTITUTIONS

The Municipal Court and Commercial Court are the main implementing institutions of the laws on the registries for collateral, land, and companies. Other implementing institutions are notaries, special registries, and district offices. Informal procedures are also used by the public in an attempt to implement the laws relating to the transfers and mortgaging of land and movable property.

1. COLLATERAL REGISTRY

a) MUNICIPAL COURT

(1) ORGANIZATION

The law does not establish a centralized, primary agency which is responsible for registration of movable property. The Municipal Courts of the respective regions maintain listings of agreements which create security interests (e.g., pledges and fiduciary transfers) in movable property through judicial determination and notary agreements. The Court records agreements which have been submitted by notaries under the laws as well as its own decisions regarding these agreements. Ancillary functions relating to the enforcement of these agreements are also carried out by the Court.

An example of the organization and manner in which these functions are carried out is the Zagreb Municipal Court. The Zagreb Municipal Court is the largest of the municipal courts in Croatia. It has designated groups responsible for maintaining records on the judicially determined agreements and the notary agreements. The Court has approximately 15,000 filed agreements with approximately 8,000 of such agreements being judicially determined and 7,000 being notary agreements. About 50% of these agreements involve immovable property which had not been registered in the Land Registry at the time the agreement was either judicially determined or created by the notary. The remaining 50% are agreements relating to movable property.

(2) PROCEDURES

The division is not computerized. Entries of information are made in a series of books and on cards. One set of books is for the judicially determined agreements ("OVR"). The second set of books is for the notary agreements ("ORZP"). Within these two sets of books, the entries are made by year and then in designated alphabetical sections. The books do not provide space for a detailed listing of the charged property. Thus, to find a pledge of movable property for "John Smith," you would need to look through nine annual volumes under the "S" section of each volume. Included in this information are mortgagees and fiduciary transfers on immovable property. Once one finds "John Smith," details on the charged property may be insufficient to identify the property.

(3) IDENTIFIED CONCERNS AND PROBLEM AREAS

The concerns regarding the Land Registry at the Municipal Court are:

- The implied guarantee by the Court that the collateral exists
- Human error in entering the information in the books
- Difficulties in retrieving information for clients
- Lack of completeness of records
- Inadequacy of staffing requirements under current system and requirements
- Space required for storage of documents

Implied guarantee by the Court that the collateral exists

While not explicitly stated in the law, there is implied a guarantee by the issuance of the certificate of the Court that the collateral exists. For example, a recent dispute involved the degree of completeness of a house which was given as security. The Court did an inspection of the property for a fee of approximately \$20 USD. The question is does the Court have liability if the charged property does not exist or is of lesser value than judicially determined?

Human error in entering the information in the books

In addition to various handwriting styles, there is the potential for human error in entering information. There is no method available to the creditor or debtor to check the information that has been entered by a clerk in the Court. The already complicated and lengthy examination of 9 volumes of books is exacerbated by misspelling and misplaced entry of information.

Lack of completeness of records

The Court has no means of enforcing the compliance of notaries to send information on agreements. This is viewed as a voluntary act by notaries. From interviews with businesses, there is a general perception that these agreements do not have to be recorded with the Court. The act of recording is left to the notaries or the parties to the agreement. If not all of the notaries and parties are complying with the law, the records of such recordings are incomplete.

The law also requires registration in special registries of agreements relating to property, the transfer of ownership of which must be registered with such special registry. Thus, not all agreements regarding pledges of movable property would be found in the Court's books.

Inadequacy of staffing requirements under centralized system and requirements

Since the system is not centralized and not all pledges are registered in one agency, additional or new staffing would be required if any one court were designated as the central registry. Computers and other equipment would be required to link the various courts to a centralized system.

Space required for storage of documents

Copies of the judicially determined agreements or notary agreement are kept by the Court until the Court is notified that the terms of the agreement have been satisfied by payment or execution. Retaining copies of these documents increases the need for additional space and methods of retrieval. There is no method to determine if the agreements have expired by their own terms other than by relying on notification by the notary involved in the matter.

(4) RECOMMENDATIONS

The ultimate goal should be to establish a computerized registry which centralizes all data on security interests in movable property, whether tangible or intangible. Recommendations whose implementation is suggested to commence within the next six months are as follows:

- Determine scope and cost competitiveness of internationally available software applications which are compatible with legal requirements.
- Identify legally and financially viable sources of revenue from, and interest, of private and public sector to improve Court systems, equipment, and services.
- Design legal, procedural, and logistical specifications for an institutionalized collateral registry through public-private dialogue. Develop approach for implementation and rollout.
- Commit to formal steps to obtain revenue for improving Court systems, equipment, and services (e.g., formation of public/private association to fund design, implementation, and maintenance of service of computerized system).
- Determine needs for collateral registry outside Zagreb.
- Determine current procedures and practices used to identify collateral through special registries (e.g., Police Department).

b) SPECIAL REGISTRIES

When the object of the pledge is such that the transfers of ownership must be recorded in a special registry, agreements pledging such property must also be registered at the special registry.

c) NOTARIES

Notaries are closely associated with certain aspects of the creation and registration of agreements creating security interest in movable properties. Under the Law of Execution, notary documents are deemed the same as a judicial decision of the Court and acceptable for registration without further review or approval by the Court. In this capacity, Notaries are part of the implementing institutions. Secondly, Notaries serve to acknowledge the signatures of parties to agreements which may subsequently be reviewed by the Court as part of the registration process. As such, the Notaries are supporting institutions. The concerns of the Notaries parallel those of the Court. Notaries complete a search of the Land Registry in the course of their functions and find that the lack of reliable information is detrimental to the services they perform. Additional concerns are: i) slow turn around of work from the Court, ii) inadequate notice to others of agreements by publication in the official gazette, and iii) the procedures required to pledge or transfer movable property is cumbersome, time consuming and costly to the client.

2. LAND REGISTRY

a) MUNICIPAL COURT: DIVISION OF LAND REGISTRY

The legally responsible governmental agencies for Land Registries are the Municipal Courts of the respective regions. The Municipal Court tracks transactions relating to immovable property, conducts title searches, and responds to inquiries regarding the status of the land. Ancillary functions relating to the creating of agreements and enforcement of mortgages are also carried out by the Municipal Court.

The Zagreb Municipal Court is the largest of the Municipal Courts in Croatia. It has designated a division responsible for the land registration functions ("Land Registry"). The enforcement of mortgages is carried out by the enforcement division. There are three registration systems relating to immovable property working at the Zagreb Municipal Court. The classical registry is the system that follows procedures and practices established over 100 years ago but which do not comply with the current Law on Land Registration. The new registration system is a computerized system that documents transactions with certain tenants, which is called "Book of Deposited Contracts" ("BDC registry"). The third registry system records mortgages or fiduciary transfers of immovable properties which were not recorded on the classical registry or BDC registry at the time the underlying agreements were created by either judicial determination or notarial act. Procedures relating to this third type of registry are described under the Collateral Registry as movable property is also contained in this registry.

(1) PROCEDURES

The classical registry is not functioning as a computerized system. There are four computers which have a program for the receptionist to log in requests and to follow the progress of these requests. However, three of the computers do not work. All the following tasks performed by the classical registry are manually noted on folder, papers, or books:

- Requests are received from clients in the form of a "Proposal for Registration" ("Proposal").
- The Proposal is stamped, and date and time of receipt is written on the document.
- A file is prepared into which the Proposal is placed.
- A sequential number is allocated to each request from the "Request for Registration" book.
- The Proposal is entered into a series of books including the "Request for Registration" book and other books listing requesters' names in alphabetical order.
- The File is distributed to clerks for resolution.
- If a Proposal is returned unresolved to the client, a new number will be assigned and noted upon return to the Court. Both numbers are then noted in the respective books tracking this Proposal.
- Information regarding the progress of the Proposal is noted in the books.
- The File is submitted to the judge after the clerk has obtained necessary documentation.
- The Judge issues a decision.
- Decisions are noted in the respective books
- All documents which support judicial decisions are put in the "Collection of Documents". They are permanent books which are never destroyed. The Court is obligated to bind the documents each year.

In the event that the description of the property which is subject to the request has not been harmonized with the cadastre records, the Land Registry must instruct the client to obtain maps and certificates and other documents from the cadastre to modify the records of the Land Registry. Other documents may also include consents from neighbors to the client registering his/her interest in the property. The individuals go two or three times to the cadastre for this information in addition to the trips to the land registry. In some areas of Zagreb, it is estimated that 50% of the land in the Land Registry is not harmonized with the cadastre. Also the cadastre records do not properly reflect the true condition and use of the many parcels of land.

The BDC registry follows essentially the same procedures as the classical registry except that entry and retrieval of data is done by computer. Decisions are printed directly from the data that has been entered, and corresponds with the form of the extract used by the classical registry.

Judges are assisted by typists and other administrative assistants. After the review of the proposal by the clerk, the judges review and issue their decision on the cases. Typist type the decisions. Staffing is limited in this department.

(2) IDENTIFIED CONCERNS AND PROBLEM AREAS

The Zagreb Municipal Court is confronted with the need to fulfill the following tasks:

- Harmonizing the cadastre with the Land Registry books
- Updating, replacing, and correcting records
- Ensuring accuracy and completeness of information in records
- Responding to clients' need for timely and accurate responses to requests

- Processing the backlog of requests
- Providing personnel, space, and equipment to do work
- Providing training to personnel in new laws, procedures, and regulations relating to land registration
- Integrating with other immovable/movable registries

Harmonize the cadastre with the Land Registry books

Page A of the Land Registry books describes the property. This information is often inconsistent with the information in the cadastre and does not reflect the current use and ownership of the property. The Court covers 50 cadastral counties. The new measurements made by the cadastre are only reflected for 8 of the 50 counties. The eight counties were harmonized from 1966 to 1970. The municipality in which the Court is physically located was harmonized from 1970 to 1981. The remaining records in the Land Registry for the areas covered by the 42 other cadastral counties contain data from 1905, and the discrepancies are numerous.

The Law on Land Registration requires the Land Registry to be based on the cadastre, which is overseen by the local municipal office of the land cadastre. The Land Registry is responsible for renewing and amending its books, but there is no law requiring the cadastre to assist the Land Registry in making these changes. The Land Registry is currently only making these changes when a request is made by a client. There is cooperation between the Land Registry and cadastre on a case-by-case basis. However, there has not been a meeting between the Land Registry and cadastre to discuss area-wide programs to harmonize the records.

Entries into the BDC registry include information from the cadastre but are tracked by building number and apartment number assigned by the local municipality. Cross-referencing information to other records in the BDC registry is available.

Update, replacing, and correcting records

In addition to harmonizing the Land Registry books with the cadastre records, the Land Registry books need to be updated. During the socialist times, the Land Registry functions were not consistent with the general principles and priorities of the government. Therefore, the Land Registry was ignored and was not funded to allow the updating of records. Much of the development of land is not shown in the Land Registry in certain areas of the city (e.g., Novi Zagreb). Off-record transfers between individuals have also been common. Records still list certain parcels as being state-owned. Only upon request of a client are these records changed.

The classical registry relies predominately on manual entry of information into traditional journal books. Approximately 10% of the books are in terrible condition—pages are torn, attempted taping repairs have left entries illegible, and the binding of the journal books have come undone. Other books show varying degrees of wear and tear. Books showing the most wear and tear (the paper is very thin and the binding weak) suggest that those purchased about 17 to 18 years ago and about one year ago were of poor quality. On the other hand, books showing entries in 1827 are in excellent condition compared to these later volumes. The breakdown of these volumes also does not seem to relate to repeated use as volumes with

equal numbers of entries as the damaged books have endured the handling of clerks in much better shape. The Land Registry must re-enter the information in these damaged books, and the only current available method of doing so is by hand.

The Proposal for Registration includes requests to change the land registries which do not correctly state the title of the property. These requests include noting that the land is not owned by the government but owned by the owners of the building on the land. Privatization of other government property must also be changed. Probate matters must be shown when a resulting transfer of property occurs.

The BDC registry was created to track the interest of tenants in buildings. There are approximately 110,000 entries. Since this information is newly entered there is not the historical information which must be reviewed and corrected prior to entry.

Ensure accuracy, completeness of information in records

Under the current law, the Land Registry guarantees that the title as reflected in the Land Registry is the legal title. Under the current conditions, Land Registry records are not a true reflection of the legal title. The issuance of certificates by the Land Registry by law is a statement of assurance and accuracy. However, in fact, this assurance cannot be given in the classical registry. In the BDC registry, there is a legal question whether the issuance of certificates on mortgages holds the same type of guarantees as the classical registry.

Respond to clients need for a timely and accurate response to requests

As of January 2000, there were 84,301 unresolved cases in the Land Registry. At the beginning of January 1999, there were 80,402 unresolved cases. During 1999, the Land Registry received 12,447 BDC registry matters and 25,347 classical registry matters. The Land Registry resolved 14,143 BDC registry matters and 19,752 classical registry matters. In addition, the Land Registry issued 91,774 extracts, other certificates, and requests during 1999.

There is a general public perception that one can have their request processed in a shorter period of time if they obtain the services of a person to facilitate the request (i.e. attorney, notary, or other assistant). It is assumed that the money paid to the facilitator goes to paying a clerk to assist in this process. The cost of such facilitation, if not a notary or attorney, is about 200 to 800 HRK. Another interpretation of this belief is that you must have a family member or personal contact with the clerks to get a request processed. In one instance, an individual waited 5 years to have a transfer request processed. There is a method whereby the president of the Land Registry can expedite the processing of a request based upon economic and other needs. Guidelines are not clearly stated for this procedure.

Process backlog of requests

While progress on the backlog in the BDC registry seems to have occurred in 1999, 6,595 unresolved cases were added to the classical registry backlog that year. Some view the backlog of cases as cases which represent double requests or case of non-importance. However it is difficult, if not impossible, to determine the relevancy of the backlog in the classical registry. A log is maintained of the requests and the nature of the requests but they

are contained in journals and not easily sorted. On the BDC registry, this information is more readily accessible through the functions of the software application.

Provide personnel, space and equipment to do work

The Zagreb Municipal Court moved to its current facilities in 1970. There has been a tripling of the number of clerks who occupy the same offices as in 1970. There are currently five judges, one counselor, 74 clerks, 16 typists, and 10 administrative assistants who write the decisions, and trainees preparing for the state exam. The judges see about 6,600 cases per year. About two years ago, the Ministry of Justice allocated new space for the Land Registry in the basement of the National University library building, but the Team understands that the space has not been completed due to lack of funds. However, the facilities have not been completed and made available to the Land Registry as of the date of this report.

There are two employees who oversee the archiving of Land Registry files and documents. There is not enough space for storage—currently, along with other files of the Court, 120,000 files are stored in 25 square meters. Those documents, upon which Court decisions are made, must be maintained forever. Other documents must be kept for 10 years. Storage requirements will increase as the backlog of case is filed. The Court has requested the use of archive space in other locations but has not been advised if such space will be made available.

Most work done in the classical registry is manual. There are four computers for entry of requested information, yet only one is working. The BDC registry has approximately eight computers with one server. Fifteen of the 74 clerks working in two shifts are devoted to the BDC registry with the remaining staff working on the classical registry. The software for the BDC registry is DOS based. The application includes pull-down menus and on-screen instructions to assist personnel in entering information. There appears to be adequate security measures (e.g., passwords, and separate level authority for modification of data). The Court has requested on two occasions that the equipment and software of the BDC registry be upgraded and its capacity expanded to allow entry of information for the classical registry. There has been no response to these requests. The computer system was designed by Microlab, a local company, who also maintains portions of the system. Some hardware is not under the maintenance contract.

Provide training to personnel in new laws, procedures, and regulations relating to land registration

Many of the trained personnel of the Court left to pursue work in the private sector (e.g., notaries). Clerks are trainees for a minimum of one year at which time they must take an examination administered by the state. In addition to the loss of trained personnel, there have been numerous changes in the law over the last few years. The Court, lawyers, business constituents, and the clerks themselves recognize the need for training in the law. Additionally, the current procedures used by the classical registry are the same ones that have been used for the last 100 years. Training in current techniques for processing of information and providing service to the public would be helpful. Informal meetings have taken place with academics to discuss the new laws but no curriculum or planned training sessions have evolved from these discussions.

Unofficial documentation of transfers and mortgages on immovable property

Within the private sector, unregistered transfers and mortgages of properties have taken place. It is estimated that large percentage of the land transfers were unregistered transactions. Most importantly, the changes in the law have not encouraged a change in this behavior. These transactions involve notaries in their capacity to acknowledge the capacity of the parties signing the document. Most individuals and business understand and accept the need to have documents of this nature officiated by a notary. Banks also participate in this unofficial procedure for lending money on immovable properties relying on the publication of such transaction as notice to others.

To integrate with other immovable/movable registries

The books of the third registry dealing with immovable property, which had not been previously registered with the classical registry or BDC registry, do not provide sufficient description of the immovable property. Therefore, individuals searching the records can not determine if such property has been subsequently or previously registered with the Court in the other registries. This further increases the difficulty of using such books as a reliable source of information to the public.

(3) RECOMMENDATIONS

The ultimate goal is a computerized Land Registry which contains accurate, legally valid information which is readily and easily available to the public. The costs of using the Registry should reflect the costs of maintaining the Registry. Within the next six months, it is recommended that the following steps be commenced.

- Designate Zagreb Municipal Court as pilot program.
- Identify changes required to convert procedures to full harmonization with the law. Use data to assist in design of computerized and other systems to be adopted by Court.
- Identify legally and financially viable sources of revenue from, and interest, of the private and public sectors to improve Court systems, equipment, and services.
- Compare costs and benefits of updating existing software application and hardware versus acquiring new software for land registration. New functions of computer system should include scanning, Internet retrieval of information and registration, integration with other databases, and other advanced functions.
- Commit to formal steps to obtain revenue for improving Court systems, equipment, and services (e.g., formation of public/private association to fund design, implementation, and maintenance of service of computerized system).
- Correct inconsistencies between Land Registry books and cadastre records on a demand, case-by-case basis rather than global method.

- Conduct meetings with cadastre to identify problems and approaches to solving lack of harmony between Land Registry books and cadastre records.
- Determine best distribution of requests for registration to clerks based upon experience of clerks and difficulty of request.
- Allocate higher priority cases to more experienced clerks on a pre-determined rotating basis.
- Implement pilot of resource allocation strategy based upon experience of clerks and difficulty of request. Develop strategy for national rollout.
- Determine elements of current skills and knowledge required by trainees to pass state exam and knowledge acquired by seasoned clerks through experience. Incorporate findings into curriculum for training program.
- Design and implement training programs for trainees and clerks.
- Determine if documents retained in archive correspond to legal requirements or administrative needs, and the cost of and alternatives to maintaining archive in current condition and procedures.
- Inventory archive files by date. Destroy files which exceed statutory requirements of retention.
- Move Land Registry and archive to facility with more space.
- Authorize Court to charge an "expedited" processing fee.
- Allocate funds collected by Court for "expedited" processing fee to fund updated software and hardware for computerized system.
- Fulfill payment obligations for binding of Contracts Books.
- Publicly tender a contract to produce journal books based on quality and cost.
- Assign inputting of backlog of requests for registration to specially trained staff or outside agency.
- Develop and implement training curriculum for data entry into computerized records.
- Modify procedures to use only one notice number per request. Re-submissions should be noted by "resubmission" date field on computerized system.
- Design form to be printed on adhesive paper to apply to Court file jacket to reduce need to input manually information.
- Update existing computerized system by installing 15 new monitors and computers, one new server, printers, and related wiring. Estimated cost: 80,000 DM.

- Improve horizontal and vertical integration throughout computerized system by linking judges to system. Purchase computers and related hardware. Estimated cost: 20,000DM.
- Determine status of all Municipal Courts' compliance with laws on land and land registration. Make recommendations on increasing harmonization within the Court system.

3. COMPANY REGISTRY

a) COMMERCIAL COURTS

(1) OPERATIONS

Twenty-two of the approximate 1,200 judges in Croatia sit on the Commercial Court. Registration of companies is done at one of the eight Commercial Courts throughout Croatia. In each court, there are one to two judges supported by a staff of clerks to perform the duties associated with the registration of companies.

An example of the Company Registry is the Zagreb Commercial Court. There are 30 staff positions, however, at present only about 20-22 of those are filled as some staff are on maternity leave or military service. Included in the available staff are one counselor and two judges since the end of 1999.

The Company Registry is computerized. There are four laser printers and two dot matrix printers, and one photocopying machine which does not have a document feeder. While company information is entered into an electronic database, the staff works from paper files which are stored in the various rooms. An archival space is used for storing historical, post-liquidation, and other company information.

The main functions of any Company Registry in Croatia are:

- deciding on registering companies
- re-registering companies requesting harmonization with changes in the law
- completing *ex officio* requests for liquidation
- answering requests for extracts, certificates, and reviewing files.

In the first quarter of 2000, the Zagreb Company Registry handled 3,321 requests for company registration and 2,743 requests for extracts and certificates, and issued 4,506 decisions on company registrations. Some of the decisions were from the backlog of cases that grew during the past 5-6 years when the 1995 Company Act was passed and then amended in 1997 to increase the basic capitalization requirement. The main reasons for the backlog were:

- the exodus of Court staff to more lucrative jobs
- the influx of requests for company registration in 1991, 1995, 1997, 1998
- the lack of computers and adapted software to handle the influx
- unanswered summonses for additional documentation for improper filings

- the delay until 1998 of changing of registration to comply with the increase in basic capitalization.

In 1999 and thus far in 2000, the stream of improperly filed cases has lessened as notaries and attorneys have improved their understanding of the system and their services to clients.

The reception room is the main room used and seen by the public. Several receptionist prepare the paper files and folders for the clerks. Usually at the Zagreb Commercial Court, there is a separate line for requesting and obtaining extracts and one for submitting and checking on registration applications. Each line is manned by one receptionist. Another room is used by clerks to review cases while judges have separate rooms to review complicated cases.

(2) PROCEDURES

Clients must submit the required documents to the Company registry for processing. Most documents must be notarized. The same basic documents and information is required for all types of companies, and additional information may be required by law for specific types of companies. For example, joint stock companies must also submit information regarding stocks and reporting requirements. Such additional requirements are clearly identified in the Company Act in the sections for each type of company.

Generally, the following information must be notarized and included in the application for company registration:

- Company name and headquarters
- Company charter or statute which defines the type of company (e.g., limited liability, partnership, etc.) and a description of activities according to the Law of National Classification of Objectives, and
- Names, signatures, national registration number, and residence of persons authorized to represent the company.

In addition, the following information must be certified by the appropriate organization and be included in the application:

- Bank statement certifying the proper amount of capitalization based on the type of company
- MBS number provided by the Bureau of Statistics, and
- ZAP number for establishment of payments account.

If a registered company wants to register a subsidiary or another company, it must produce certificates from government agencies (e.g., tax, social welfare, health insurance, etc.) certifying that all of its current subsidiaries or affiliated companies are current on their obligations to their employees and the state. The registering company submits a written request to the agencies for these certificates and waits for responses.

A registration is begun by a notarized, written request, upon which the Court must act “promptly,” although it has no formal deadline. In certain, unspecified matters, the Court must act *ex officio*. If there is a hearing on the registration, it is conducted by one judge.

A nominal application fee is due when the application is submitted and must be in the form of a revenue stamp which is obtained at a post office or other designated agency.

The applicant provide two copies of the application, both of which are stamped with the date and time received by the Registry, and the clerk assigned to the application. One copy is returned to the applicant who is then to wait for a notice that a decision has been made or a summons to provide additional information. Applications are assigned to clerks sequentially by alphabet so that case loads remain approximately even. Complicated applications or those with legal questions concerning the company's formation, founder, or representatives are forwarded to judges for their attention and action. These applications may take longer to resolve.

For standard applications, clerks verify that the information provided is in accordance with the law. For example, regarding the description of the proposed company's objectives, clerks decide if the description complies with the National Classification of Objectives nomenclature and that the appropriate fee of 100 HRK per description has been paid. Clerks also verify if the applicant has outstanding claims from another company founded under his or her name. If the applicant has outstanding claims, a summons is issued for additional information. After intake and review of these documents by the clerks, the file is presented to the judge for consideration. Provided that the documents comply with the law, the judge issues the order approving the registration of the company.

The Court reviews all formal requirements for the registration and, if they are met, registers the company. Where some of the requirements are not met, or the Court does not understand the information submitted, it may summon the registrant for an explanation. In such cases, the Court will prepare a memorandum specifying a deadline for the completion of all unclear items. If the registrant does not meet the deadline, the request for registration is considered withdrawn.

The Court verifies that no other entity has been registered with the same name and that the requested name is substantially different from the names of other registered companies registered with the same Court. The company's principal business activity is registered in accordance with the unified business classification, as provided in Article 51 of the Company Law. If the activity is not specified in the classification, the Court decides how to register it. Business entities may perform all permitted activities except those of State institutions, public entities, political parties, and other entities specified by law.

Notice is generally sent to the applicant within 14-30 days of the initial application. Applicants can speak with judges or clerks about the status of their applications on Tuesdays and Thursdays. Following receipt of the decision, the applicant must announce the registration in the official gazette and at least one other gazette. Registration is considered complete on the expiration of announcement in the last gazette. Publishing in the official gazette can take as long as 6 months.

Appeals are heard by a three-judge panel. The Court issues “decisions” on substantive matters, which may be appealed, and “rulings” on procedural matters, which are not. Unless otherwise provided by law, appeals must be supported by copies of the articles of association or other relevant foundation document; a list of shareholders or partners; verification of payment of all fees and non-cash contributions required for registration, including certified evidence of the value of all non-cash contributions and, if necessary, excerpts from the land registry; depending on the status of the company, other relevant documents, such as the identity of the receiver for companies in liquidation; and all statements required by law to support entries in the register.

If the request for registration is inadmissible under Article 46 of the Company Law, the Court will so rule and require the registrant to correct the request within 60 days (90 days for joint stock companies). The Court has discretion to decide if the request for registration is inadmissible for reasons specified by the Law (e.g., it lack required information or is submitted in the wrong form) or for other, unspecified, reasons. If the registration requires approval by government bodies, or when such approval is justified by other important considerations, the Court may extend the deadline for compliance, but in no event for more than six months. Unless the Court decides otherwise, the registration is approved without a public hearing. (If a public hearing is required, it may be held by phone.)

The Court may approve changes in the request for registration. The decision to register a company is in the same form as a decision in a contested law case and may take substantial time to draft. Where the Court denies registration or decides contested issues, its decision must be accompanied by a formal opinion. The decision to allow registration may be appealed by all interested parties. The registrant may appeal only the denial of a registration. The appellate panel may affirm, modify, or remand the judge’s decision for further proceedings.

Where the registered entity fails to register a change in particular circumstances, as required by law, the Court may register such changes *ex officio* if it learns about them. However, in the absence of a nationwide, networked registration system, the Court will seldom learn about them.

Registration can be cancelled upon the request of the registered entity, tax authorities, or, under certain circumstances, by the Court *ex officio*. The most common reason for cancellation is the failure of the registered entity to register financial statements for a period of three years. The registration may also be cancelled if it was based on non-existing or incorrect evidence or was not conducted in accordance with the law. Within fifteen days of its decision, the Court that cancels the registration must notify the Court in which the entity was originally registered. Finally, a registration may be declared null and void on the request of an interested party.

Requests for extracts and certificates are answered at the time of the request through a search on the two systems in use. The fee for these requests is 20 HRK per request plus the cost of copies. Requesting to look at a particular file takes longer. To schedule a time to see a file, a simple written request must be made either in person or through the mail and a fee of 100 HRK paid at the post office. Location and retrieval of the files sometimes take two or more days. The most common form of notification is through personal inquiry by the requestor.

Requests filed via mail generally take a week to be processed before the client goes to the Registry to find out if the file is available.

When the Team visited the Commercial Court with a local practitioner who was checking the status of extract requests, there was only one clerk as it was the eve of Labor Day holiday. Despite there being only one clerk, when the Team entered the line at 9:00, there were only 8 people in line and the wait was 20 minutes. The practitioner was able to inquire into 4 simple extract requests and receive the extracts in approximately 7 minutes. The situation may be different at non-holiday times.

(3) CONCERNS AND IDENTIFIED PROBLEMS:

The following concerns and problems were expressed to the Team during the course of this assessment:

- Inclusion of non-active companies on Company Registry
- Requirement to use description of the company's activities as provided in the Law on Classification of Objectives
- Costs of use of the computerized system
- Lack of storage space for current files and anticipated increase of files in the near future
- Failure to maintain and update computerized system
- Requirement to store all documents of companies who have been liquidation
- Requirements to maintain financial records for an indefinite amount of time.

The inclusion of non-active companies on Company Registry

Currently, more than 180,000 companies are listed in the company register, but a large number of these are inactive. In 1990, many people concluded that going into business was the surest way to survive economically and 80,000 new companies were registered, a huge influx. Five years later, the Company Law was enacted, and all registered companies had to conform their structures and procedures to it, which created another large influx of registrations. Those that failed to do so, and companies that failed to re-register, were to be liquidated. However, because of the Commercial Court's long registration backlog, some companies that requested to be registered or re-registered in 1995 have still not been formally registered, and the status of many companies is unclear. In 1997, the Company Law was amended to require that registering companies have an initial capitalization of 5000 DM, which resulted in complying companies needing to re-register. While the Court has issued summonses to many companies to comply with the requirements of the amendment by submitting additional documents, there remains a number of companies who have not responded. Some companies have requested that they be liquidated "ex officio" which the Court must process.

Requirement to use description of the company's activities as provided in the Law on Classification of Objectives

One of the most nettlesome aspects of the registration process is the description of the company's objectives in the request for registration. During registration, companies are

required to use the Law on the Classification of Objectives to describe the objectives of the company to be formed. It appears that this requirement was enacted to assist in statistics-gathering function of the Bureau of Statistics. This requirement has added complexity and cost to the company registration process. As a result, registrants seldom list all of the objectives that they might otherwise list and are discouraged from amending objectives. The registrant must pay a fee of 100 HRK for each objective listed in the registration request. If the company wants to list objectives not found in the official nomenclature, the registrant must add these objectives, each marked with an asterisks at the end of the list of official objectives—at a cost of 100 HRK each.

Lack of storage space for current files and anticipated increases of files

There is a constant submission of documents regarding the financial statements, minutes, and decisions, and other information of registered companies. Already the archive space does not accommodate the amount of paper required to be stored, and there is a progressively increasing number of cases and documents to be stored. If the influx of paper does not decrease, additional staff will be needed to handle the storage and retrieval of these documents.

Since the date on which companies are required to file the financial information in the company file is the same, there is a large influx of documents during that time. This imposes a strain on the personnel who must also continue to processes regular requests for registration and extracts. Older financial records cannot be transferred to storage or destroyed as there is no designated time period for keeping such records.

Requirement to store all documents of companies who have been liquidation

When a company is liquidated, all documents (e.g., working papers, payroll receipts, bills) must be filed and kept by the Commercial Court for an indefinite period. For documents from an ordinary kindergarten, one meter of storage space was actually used. Additional space will be required to accommodate the anticipated increased number of documents from liquidated companies. Documents must be stored in a manner allowing easy and quick retrieval of information as the Court will also be required to issue certificates regarding the company after its liquidation increasing staffing requirements.

Failure to maintain and update computerized system

The Company Registry computer system needs constant updating to comply with the law and to address the needs of the Court. Some of these needs are as follows:

- to be able to change the capital amount of a company following the initial registration of the company
- to be able to retrieve statistical data
- to link judges to the information system so that they could directly retrieve information increasing the speed of retrieval by the judges to such information
- to increase the speed and memory of the computers

Costs of use of the computerized system

There is computer access via the Internet to company records in the Company Registry. The cost of using the system is expensive. There is an initial fee of 5,000 HRK and monthly access fees of 1,000 HRK. In addition, each use, search, and download is charged separately. These fees have resulted in limited use by the public of the Internet to retrieve information. Instead, people go to the Court, where information may take longer to obtain but is more affordable. Consequently, the Court is required to use more time, people, and financial resources to respond to requests than would be necessary if searching via the Internet were made affordable.

(4) RECOMMENDATIONS

The ultimate goal is to have a Company Registry which contains accurate, legally valid information on the existence of a company which is ready and easily available to the public. The costs of using the Registry should reflect the actual expense of maintaining the Registry. The Team suggests commencing the following recommendations in the next six months:

- Designate Zagreb Commercial Court as pilot program.
- Lower fees for access through computerized service for public.
- Determine status of all Commercial Courts' compliance with the Company Law. Make recommendations on increasing harmonization within the Court system.
- Identify redundant information maintained in the files. Determine legal and procedural amendments necessary to eliminate redundancies.
- Identify non-commercial entities that are required to register. Determine legal and procedural amendments necessary to eliminate the requirements for their registration in the Company Registry.
- Determine the impact of reducing the legal period of time for keeping documents and of eliminating certain filing requirements with the aim of lessening the filing and archiving burdens of the Court and users.
- Determine feasibility of integrating databases of all registries dealing with business enterprises (e.g. professional associations, "handicrafts", Bureau of Statistics) and make recommendations on strategy and costs to implement.
- Determine feasibility of increasing information technology staffing of Ministry of Justice dedicated to the maintenance of hardware and software.
- Determine elements of current skills and knowledge required by trainees to pass state exam and knowledge acquired through experience. Incorporate findings into curriculum for training program.
- Determine if documents retained in archive correspond to legal requirements or administrative needs, the cost of keeping archive in current condition, and alternatives to maintaining archive under current procedures.

- Update the information technology strategy and system capacity to allow for horizontal and vertical integration throughout the Court.
- Modify software application to produce reports on companies to which summonses have been issued to facilitate follow-up and to increase the reliability of records.
- Add the capacity to the computerized system to allow searches by shareholder name.
- Design and implement training programs for trainees and clerks.

b) SOLE PROPRIETOR REGISTRIES

Sole-proprietors and individuals (usually classified as person involved in "handicrafts", no matter what their commercial activity) register at the seat of one of Croatia's twenty-one districts, each of which has an office for the purpose. Generally the procedures are not considered as not overly burdensome. There are approximately 90,000 of these types of business entities, employing approximately 110,000 people. This registration also requires the filing of annual financial reports.

c) PROFESSIONAL BUSINESS ENTERPRISES REGISTRIES

Certain professionals who are involved in business enterprises are required to be members of associations which track their respective memberships. Some of these associations, e.g., the Croatian Architecture Association, issue licenses. Generally, these businesses are not required to be registered in the Company Registry at the Commercial Court.

C. SUPPORTING INSTITUTIONS

Supporting institutions are the official and unofficial offices, organizations, and individuals that have an interest (stake) in the Land and Company Registries, and the registration of collateral (pledges on movable property). Without such institutions the registry system can not function. There is significant overlap in those institutions which support these registries. The Registries Modernization Team considered the following organizations as supporting institutions.

1. CROATIAN BAR ASSOCIATION

In Croatia, all practicing attorneys must be members of the Croatian Bar Association. The Bar Association has a direct interest in the activities of Land and Company Registries and a collateral registry as many members represent individuals and companies who are engaged in related activities. It is lawyers who often shepherd their clients' issues through the various registries, and who have improved their knowledge of the associated processes, which according to some Registries, has facilitated registrations. The Bar Association has formed a committee to review those issues relating to the Land and Company Registries and a collateral registry. The Bar Association and its members generously provided their expertise and time to the Registries Modernization Team in preparing this report.

2. NOTARIES

There are less than 300 notaries in Croatia, many of whom are former judges and court clerks, and Notaries have organized their own Chamber of Notaries. To be a notary, one must receive formalized training and pass a state examination. Notaries perform at three levels of service: a) authorization of signatures to an agreement; b) solemnization of document prepared by another; and c) official notarial acts.

Authorization of signatures only assures that the person signing the document has the legal capacity to do so. The notary does not need to read the document bearing the signature to confirm legal sufficiency. Solemnizing the agreement requires the notary to check all aspects of the agreement as it relates to the law (i.e., the rate of interest, property described as reflected on the Land Registry); determine the existence and specific intent of the parties to enter into the agreement; and explain to the parties the legal presumption that the document is a truthful and accurate reflection of the agreement between the parties. The creation of an official notarial document requires the notary to write the agreement and to perform the duties under solemnization of the agreement. The notary is part of the implementing institutions when creating a notary agreement for immovable property and movable property under the Law of Execution. When acknowledging documents, the notary is a supporting institutions. Please see comments under Implementing Institutions. There is a split in the support of notaries for a private registry within their own organization. However, most acknowledge the need for a better mechanism of registration of land and collateral.

3. BANKS

Banks in Croatia, like other companies, must be registered with the Company Registry. Under the Banking Law and corresponding regulations, banks must establish a registry listing all the assets and obligations owed to the bank. This registry has not been formed as the date of this report. A group of banks have expressed an interest in assisting in the establishment of a collateral registry for pledges on movable property. Additionally, the banks have offered to assist the Land Registry in addressing some of that institution's needs.

4. BUSINESS ASSOCIATIONS AND SUPPORT ORGANIZATIONS

All companies are required to be members of the Croatian Chamber of Economy, and membership fees offset the cost of the Chamber's administration and member services. Membership in the American Chamber of Commerce (AmCham) and the Croatian Employers Association (Employers Association) is voluntary. These organizations are active in representing the interests of their members in the Land and Company Registries and a collateral registry. The Croatian Chamber of Economy has a working group who focuses on issues relating to registries and banking and lending. The Employers Association is currently undertaking a survey of its members on questions specific to modernizing the different registries and on ideas for improvement. The AmCham is perhaps the largest business support organization representing the interests of foreign investors. AmCham members were able to provide comparisons of the registry procedures in neighboring transition countries, and examples of instances when foreign investors decided to invest elsewhere rather than lose time and money dealing with the complications associated with securing land.

In meetings with all these organizations, the business community's enthusiasm and desire for immediate modernization of the registries—including changes to the law and the procedures and improving access to information—was loud and clear.

At the request of the Government of Croatia and on their initiative, these organizations have reviewed and commented on drafts laws affecting commercial activities by getting the input of their respective members. All these organizations have expressed an interest in establishing a dialogue with the government to assist in drafting laws instead of merely commenting on drafts. The comment was made that drafts prepared without input from the business community often do not address key economic issues, and to address the business community's interests requires completely rewriting the draft.

These organizations play a valuable role in training their members on the law and amendments, and in the different procedures and processes required during the registration process. The more prepared and informed the users of the registries are, the lesser the burden on the Courts' resources.

5. LAND CADASTRE

The Land Cadastre is a supporting and interdependent agency to the Land Registry. They are two key components of land administration. The functions of the Land Cadastre are overseen by local municipal offices. In Zagreb, there is cooperation between the Land Cadastre and Land Registry on a case-by-case basis; however, there have not been formalized meetings to address the large-scale problems of the two agencies. The main problem is that descriptions of the land for city areas by the two agencies are inconsistent and need to be harmonized. Even after harmonization, these two agencies must continue to coordinate while undertaking their respective efforts to track the ownership and use of the land.

6. STATISTICAL BUREAU

In that companies are required to obtain an identification number (the MBS number) from the Statistics Bureau, the Bureau is a supporting institution to the Company Registry. The MBS number allows the Statistics Bureau to track the number of companies in Croatia, the types of activities they undertake based on objectives in their listed registration, and other information.

D. MARKET FOR REFORM

The "market" refers to how the users of the laws relating to the registries and the registries themselves view the supply and demand for change. The "supply" side relates to the quality and amount of the laws regarding the different registries, as well as the current situation of each registry (e.g. rules, practical problems of enforcement). Quality refers to the applicability of the law to the country's situation, which is particularly important when laws have been copied from other countries but perhaps not modified for the copying country's specific circumstances. The amount of laws refers to whether there are too many unnecessary laws or a lack of laws that address specific issues, and to the consistency of laws upon which the business community can rely.

In Croatia, the supply of framework laws regarding the registries is good, although there are laws and regulations for which amendments should be considered. Additionally the laws must be harmonized with certain realities (e.g., lack of acquisition of software application to computerize Land Registry).

The "demand" side arises from the desire of institutions and persons to modernize, reform, or change the rules and/or procedures of the system. The desire should not only be expressed in a coherent way but also their input should be seriously considered. A high degree of consensus seems to exist among those interviewed that registries modernization is needed and that the priority concern is the Land Registry in terms of technology, space, and updated and harmonized information, followed closely by the development of a collateral registry. Where consensus is needed is in the specific details such as which software is best suited for Croatia's needs. There was a definite and stated readiness and willingness on the part of businesses and banks to help the government and to participate in the modernization process.

Communication between stakeholders is weak and non-institutionalized. For example: legislation regarding land registration was not adequately discussed with the Land Registry—the actual implementing institution—before enactment of the law. Users do have forums for discussion in business associations but there does not seem to be an established mechanism for sustainable public-private sector policy dialog despite the positive desire by the government and the private sector. The most "coherent" or organized segment of society demanding reform in this area is, not surprisingly, the legal profession. The business community has coherent desire within the different individual associations but there does not appear to be any collective discussions between all the associations.

1. COLLATERAL REGISTRY

There is general agreement on the need for a registry that would centralize information regarding pledges of movable property. Currently the records are localized in Municipal Court or the records of notaries or parties to the agreements. Despite laws requiring publication and filing with the Court, publication and filing is ad hoc.

The market for loans secured by pledges on movable property is in the beginning stages. Most commercial banks rely upon the creditworthiness of the borrower and then the collateral. The collateral preferred is immovable property. However, pledges of movable property are being used. The most common form of agreement is the mortgage and not the fiduciary transfer. Leasing arrangements as a form of financing are also gaining some market share. A notary agreement over a judicially determined agreement is the preferred method of validating an agreement.

Companies have provided movable property as collateral. Cars as collateral have proven difficult in that most commercial banks require leaving the owner certificate at the bank. Repairs to the car necessitate going to the bank and retrieving this evidence of ownership. If a company gives a pledge of raw material, that material must be set aside in the warehouse and duly marked as being the collateral of the creditor. This is merely another form of possessory pledge in that the benefit of a non-possessory pledge to the business is eliminated (e.g., use of property). Accounts receivable are also inconvenient in that the borrower company must obtain blank notes signed by the debtors. Then the borrower company must deliver the same to the lender.

Fiduciary transfer does not seem to be a popular method with the banks for either immovable property or movable property. Clearly the fiduciary transfer is more beneficial to the creditor than the borrower. From recent practices, it appears that this method of ensuring the creditor of recovering its money has been misused to the disadvantage of those less able to negotiate a mortgage. One major company said that it would never give a fiduciary transfer and that its bank would not require it do so. However, companies with less negotiating power might have to agree to such an arrangement. Credit unions appear to have abused the use of fiduciary transfers by requiring their members to assess the collateral at less than the true value and then claiming the property for the lesser amount. Other actions by the credit unions are alleged to have made the sale of the property difficult through the listing of disputes on the Land Registry.

The use of movable property as collateral will increase once ready access to information is available to others. Modifications to the laws regarding secured transactions may need to be modified to accommodate some of the practices of banks and businesses. Some aspects of the law are viewed as inflexible requiring redundant procedures and extra-legal procedures.

2. LAND REGISTRY

Within the implementing and support institutions, all parties expressed a deep concern about the poor condition of the Land Registry. The general consensus is that the underlying laws are good but that

- 1) the realities do not match the law, and
- 2) compliance with the laws will not occur for some time for technology, fiscal, and political reasons.

As the Land Registry is a key part of land administration, the future of land use and development will be hampered. Land administration needs to be compatible with private incentives and needs to foster competition. The private market for land seeks quick, fair, predictable, reliable, and legally enforceable processes for the transfer and mortgaging of property.

Immovable property are the primary collateral used in loans by Croatian banks. However, only 70% of all sales transactions in land are made with financing. Lending institutions want reliable, complete, and adequate information upon which to calculate the risk of making loans. Likewise, persons making transactions in land using cash or other equities have a very high interest in insuring that their investments will not be lost due to incorrect, incomplete information from the land registries. The method of recording the mortgage or document of transfer should be timely so that intervening transactions can be eliminated. Recently, one major lending facility took a property as collateral only to have the owner transfer the property before registration could be completed. Enforcement of rights under the mortgage should also be easy.

The preferred form of establishing a pledge on immovable property remains the mortgage rather than the fiduciary transfer. Commercial banks set the creditworthiness of the client and then the value of the collateral as guides for making the loan. Disparaging stories have been told about lending activities of credit unions who deflated the value of collateral in

agreements so that they could seize the entire asset upon default without compensation to the borrower for any remaining value. Other misuses of the system by credit unions are claimed to be the filing of notices of disputes with the Land Registry decreasing the desirability of the collateral to any potential buyer during the three month sale period allowed for fiduciary transfers.

While Croatian law appears to comply with the requirements for an effective form of land administration in that the laws support 1) stability, 2) predictability, and 3) transparency and easy access to the land administration system and dispute resolution, the institutional framework supporting the laws are just minimally capable to perform the following functions:

- Provide access to land information
- Adjudicate boundary disputes
- Resolve conflicts and enforce property rights
- Value and assess land
- Encourage registration
- Provide technical assistance
- Allocate work between technical and governmental functions (the latter being taxation, conflict resolution).

While most observers believe that the institutions must be strengthened and revamped to increase their ability to carry out these functions, caution in instituting a major revamping of the institution is encouraged. One of the realities of the current condition of the land administrative functions of the Land Registry is that it has limited personnel, financing and equipment to maintain, let alone increase its services and activities.

Due to the frustration of the market and demand for speedier completion of the Land Registry tasks, private individuals are offering services and collecting fees for services which should be performed by the Land Registry. Overall, businesses find fees excessive and the time in which to record documents too long. Banks would like to increase the ability to assure the repayment of their loans but are more comfortable with the tried and true methods of mortgages on immovable property. Individuals are waiting up to five years to have transfer requests performed. As to the reliability of information, many sectors of the market state that one cannot be sure of the title even after obtaining an extract from the Registry. With the backlog of unresolved matters which are noted on the extract and inconsistencies between the cadastre and Land Registry, this unreliability of title as designed under the Croatian law in effect removes the guarantees afforded under the law.

The banking institutions are willing to assist the Land Registry in making changes to increase the reliability and speed of its service. Others have suggested that training would improve the performance of the clerks and judges. The problems with the Land Registry are viewed as being historic in nature more so than individually caused by the clerks or judges. However, there is a general impression that the clerks are benefiting from the "facilitating fees."

3. COMPANY REGISTRY

The general perception of the Company Registry is service has improved yet users would like to see improvements in the following areas:

- harmonizing the company registration process and documents throughout the country
- eliminating procedures requiring constant document filings
- improving access to information.

Users of the Company Registry find the process relatively straight forward. Considering the numbers of registered companies, the process of company registration is not an impediment to business, nor are the associated costs, time, and follow-up requirements. Improvements have been suggested but do not reach the same level of concern as those expressed about the Land Registry. The procedures followed and laws regarding the procedures are consistent and easily understood. The more difficult aspect of registration is the compilation of documents from various agencies and organizations prior to registering. However, small and medium business owners have stated that they have completed the process on their own without the services of an attorney. Larger business have paid \$5,000 for attorneys fees and \$1,500 for notary fees. There is a general perception that if one wishes the processes to be speeded up, facilitating fees can be paid for the service.

In addition, Registry procedures and documentation requirements differ in regions throughout Croatia. The Team was told that the Company Registry at the Split Commercial Court requires more documentation than the law requires and the process takes considerably longer than elsewhere. Such inconsistencies discourage investors from settling in a district where there is uncertainty about the law and established procedures. As Croatia moves closer to membership in the European Union, not only national harmonization but also harmonization with European standards will be required. An effort should be undertaken to survey the Company Registries throughout the country to determine their harmonization with the law and procedures.

Both end-users and the Company Registry complained about the document filings that companies are required to submit and the Registry required to file and archive. There are many redundant forms which are required for the registration process. Eliminating this redundancy is supported by both the Court and businesses. Also limiting the time that registration documents must be stored would help the situation. The same is true with post-liquidation company information. Instead of keeping the paper files, the pertinent information could be stored electronically or on microfilm or microfiche and produced upon request. The business community claims that there are too many company changes required to be filed in the Company Registry. For example, a change in the residences of board members requires a trip to the Registry, a form, a fee, and time.

There are real costs associated with filing and storing large quantities of documents. Building space is a real cost as are the time and personnel needed for processing documents. Limiting the amount of changes required to be filed and the length of time to store documents to only what is critical for government or public needs would result in savings that could be used for other important Registry functions.

Users complained that administrative staff processing company registrations and requests for information have to be offered facilitation fees for standard processing and expedited service. The Team was told that even with letters from the president of the Commercial Court approving expedited service, one is still subject to the administrative staff. Other than such hearsay, the Team could not confirm petty corruption in the Company Registry. Based on

information, it is likely that impatient clients wanting expedited service pay Registry staff to do this work on their free time or on weekends. Or, for simpler requests, clients might offer a box of chocolates to ensure that their request gets priority attention. Otherwise, requests are processed in due time. After visiting the Company Registry, slow service and the potential for petty corruption can be attributed to the paper filing system. Requests that require locating a file or venturing into the extensive archives can be simply put to the bottom of the request pile and not removed until a facilitation fee makes it worthwhile for the clerk to exert the effort to find the file. It is a matter of doing the easier requests first until there are no more or a facilitation fee is offered to do the work on free time.

If files or at least regularly requested information were available through the Internet, clients could search and view information on their own for a fee, thus freeing up time for both clients and Registry staff. Certified extracts would still require a visit to the Registry. While certain company information is available through the Internet, the 5,000 HRK initial subscription fee, 1,000 HRK per month access fee, and additional search fees significantly limit the number of users. Similarly, creating an internal integrated horizontal and vertical network among the judges, clerks, receptionists and the archives would allow each staff member to retrieve their own information. Finally, when the Company Act was revised to increase the initial company capitalization requirements, the Company Registry software was not adapted to the new law, thus creating difficulties in documenting the changes.

Improving public access to information and increasing the efficiency with which Registry staff can access information will help to reduce petty corruption that exists because people want faster access to information. Using technology will increase efficiency and allow the time for Registry staff to address existing backlogs and review the registry rolls for non-active companies to be removed. With additional staff and equipment resources, the Registry could organize staff positions so that staff could be dedicated to certain tasks instead of everyone doing a little bit of everything. For example, a dedicated person and computer for the verification of submitted financial information before filing would decrease that backlog. Currently, the backlog is only addressed when staff volunteer their free time, which is sporadic at best.

Users also noted that some clerks did not seem to be well trained. When the notary public position was introduced, many Registry staff left to take up these more lucrative jobs. Remaining clerks need to be trained in changes in the laws, and new clerks need additional training in the law, procedures, and client service. The Company Registry agreed that both judges and clerks could use additional training in the law and corresponding regulations. Training in changes to the laws and regulations and the economic impact of decisions would not only improve efficiency and client service, but also would give staff a greater understanding of how their responsibilities fit into the larger purpose of the Registry.

III. CONCLUSION

Generous contributions of time and effort have been made to this assessment by individuals who represent the implementing and support institutions. In reviewing the laws relating to land, collateral and company registries, select provisions of the law were reviewed by Team Members. Overviews of the laws were provided by local counsel.

The findings of this assessment are that the laws, as enacted, which govern the registries for the land and companies are basically sound. The laws relating to the registration of security interests in movable property needs to be incorporated in a secured transaction law which clarifies which agency and what procedures and methodology are to be used in the creation of security interest in movable properties. This law should reflect the realities of the financial market. There is a strong demand for immediate—but not radical—changes to the Land Registry, followed by progressively more complex and global changes. This schedule of changes will ensure increased stability of the Land Registry without overburdening the staff and fund available to the Land Registry. The Company Registry will benefit from some "fine-tuning" by simplifying and streamlining registration procedures. Due to the newness of the laws and lack of experience of the judges and clerks in all registries, training will greatly increase the efficiency of the registries.

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